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Attorneys for Defendant Sentinel Insurance Company, Limited

UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA

In re:
 AFFINITY LIFESTYLES.COM, INC., REAL
 WATER, INC., and REAL WATER OF
 TENNESSEE, LLC
 Debtor.

Case No. 21-14099-nmc
 Chapter 7
 Substantively Consolidated with:
 Case No. 21-14101-nmc
 Case No. 21-14102-nmc
 Chapter 7

UNITED NATURAL FOODS WEST, INC. and
 UNITED NATURAL FOODS, INC.,
 Plaintiffs,
 vs.

Adversary Procedure No. 23-01106-nmc

**SENTINEL INSURANCE COMPANY,
 LIMITED'S MOTION TO DISMISS FOR
 LACK OF PERSONAL JURISDICTION
 AND INSUFFICIENT SERVICE OF
 PROCESS**

REAL WATER, INC., AFFINITY
 LIFESTYLES.COM, INC., REAL WATER OF
 TENNESSEE, LLC, SENTINEL INSURANCE
 COMPANY, LIMITED, GREAT AMERICAN
 INSURANCE GROUP, PEERLESS
 INDEMNITY INSURANCE COMPANY,
 WEST AMERICAN INSURANCE
 COMPANY, and OHIO SECURITY
 INSURANCE COMPANY,
 Defendants.

Hon. Natalie M. Cox

Hearing Date:
 Hearing Time:

Defendant Sentinel Insurance Company, Limited, a Connecticut company ("Sentinel"), by
 and through its undersigned counsel, moves to dismiss the claims against it in the Complaint for
 Declaratory Relief filed June 23, 2023 in this matter by Plaintiffs United Natural Foods West, Inc.

1 and United Natural Foods, Inc. (collectively, “UNFI” or “Plaintiffs”) for lack of personal
2 jurisdiction under Fed. R. Civ. P. 12(b)(2) and insufficient service of process under Fed. R. Civ.
3 P. 12(b)(5), made applicable by Fed. R. Bank. P. 7012(b). Sentinel files this motion on the same
4 day it filed its motion to withdraw the reference of this adversary proceeding with this Court, in
5 accordance with LR 5011.

6 **ENTRY OF FINAL ORDER OR JUDGEMENT**

7 In accordance with Fed. R. Bankr. P. 7012(b), Sentinel does not consent to the entry of
8 final orders and judgments by the bankruptcy court. In accordance with LR 7012, Sentinel also
9 does not consent to the entry of final orders and judgments by the bankruptcy judge if it is
10 determined that the bankruptcy judge cannot enter final orders or judgments consistent with
11 Article III of the United States Constitution.

12 **INTRODUCTION**

13 This adversary proceeding involves an insurance dispute in which non-debtor UNFI seeks
14 coverage for defense and indemnity costs incurred in connection with certain lawsuits against
15 UNFI and/or one or more of the debtors, including Affinitylifestyles.com, Inc. (“Affinity”) and
16 Real Water, Inc. (“RWI”), alleging injuries resulting from bottled drinking water products (the
17 “Underlying Actions”). The Underlying Actions allege that Affinity, RWI, and/or UNFI
18 distributed bottles of water that allegedly caused injuries to consumers. None of the consumers in
19 the Underlying Actions alleges that Real Water of Tennessee, LLC (“RWT”) (the only debtor that
20 Sentinel actually insured) manufactured, distributed, or is in any way liable for the bottles of
21 water that allegedly caused injuries.

22 Sentinel issued certain liability insurance policies to RWT at RWT’s address at 530
23 Church Street, Suite 305, Nashville, Tennessee, 37219 (the “Sentinel Policies,” as identified
24 below):

25 Sentinel Policy No. 20 SBA RB6712 SA (12/31/2014 – 12/31/2015)

26 Sentinel Policy No. 20 SBA RB6712 SA (12/31/2015 – 12/31/2016)

27 Sentinel Policy No. 20 SBA RB6712 SA (12/31/2016 – 12/31/2017)

28 Sentinel Policy No. 20 SBA RB6712 SA (12/31/2017 – 12/31/2018)

1 Sentinel Policy No. 20 SBA RB6712 SA (12/31/2018 – 12/31/2019)

2 Sentinel Policy No. 20 SBA RB6712 SA (12/31/2019 – 2/20/2020)¹

3 The Sentinel Policies do not identify any other named insured entities besides RWT and do not
4 identify any insured property or locations in Nevada.

5 For the reasons set forth below, Sentinel brings this Motion to Dismiss on the grounds
6 that: (i) this Court has no personal jurisdiction over Sentinel with respect to the claims against
7 Sentinel in UNFI’s Complaint; and (ii) UNFI failed to timely effect service of the Summons and
8 Complaint on Sentinel.

9 ARGUMENT

10 I. This Court Lacks Personal Jurisdiction Over Sentinel

11 “When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears
12 the burden of demonstrating that the court has jurisdiction over the defendant.” *Pebble Beach Co.*
13 *v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). In resolving a motion to dismiss for lack of
14 personal jurisdiction, a court need not assume contradicted factual allegations as true. *Data Disc,*
15 *Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977). “A plaintiff may not simply
16 rest on the ‘bare allegations of [the] complaint.’” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th
17 Cir. 2015).

18 Where, as here, there is no applicable federal statute governing personal jurisdiction, the
19 law of the state in which the trial court sits applies. *See Core–Vent Corp. v. Nobel Indus. AB*, 11
20 F.3d 1482, 1484 (9th Cir. 1993). As a consequence, the Trustee must show (1) that Nevada’s
21 long-arm statute confers personal jurisdiction over Sentinel and (2) that the exercise of
22 jurisdiction comports with the constitutional principles of due process. *See Rio Props., Inc. v. Rio*
23 *Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). Nevada’s long-arm statute permits the
24 exercise of jurisdiction to the same extent as the United States Constitution. *See* NRS 14.065.
25 Hence, a court “need only determine whether personal jurisdiction in this case would meet the
26

27 _____
28 ¹ Policy No. 20 SBA RB6712 SA had an original policy period of 12/31/2019 to 12/31/2020, but was cancelled pro rata effective 2/20/2020.

1 requirements of due process.” *Brainerd v. Governors of the Univ. of Alberta*, 873 F.2d 1257, 1258
2 (9th Cir. 1989).

3 Due process requires “that in order to subject a defendant to a judgment in personam, if he
4 be not present within the territory of the forum, he have certain minimum contacts with it such
5 that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial
6 justice.’” *Int’l Shoe Co. v. State of Washington, Off. of Unemployment Comp. & Placement*, 326
7 U.S. 310, 316 (1945), *quoting Milliken v. Meyer*, 311 U.S. 457, 463 (1940). For a court to
8 exercise jurisdiction over a defendant, there must be either general jurisdiction or specific
9 jurisdiction. *See In re Nat’l Audit Def. Network*, 332 B.R. 896, 903 (Bankr. D. Nev. 2005). The
10 United States Supreme Court’s recent decision in *Mallory v. Norfolk Southern Railway Co.*, 143
11 S. Ct. 2028 (2023), does not change the analysis here. In *Mallory*, a Pennsylvania statute required
12 a defendant corporation to identify an “office” that it would “continuously maintain” in
13 Pennsylvania, 143 S. Ct. at 2037, and the Court found that by doing so, the defendant waived its
14 right to challenge personal jurisdiction. *See id.* at 2046 (“Norfolk Southern apparently deemed
15 registration worthwhile and opted in.”) (Jackson, J., concurring). Here, Nevada has no such
16 statutory requirement, and Sentinel had no such obligation to maintain and did not maintain any
17 such registered office in Nevada.

18 “[A] court may assert general jurisdiction over foreign (sister-state or foreign-country)
19 corporations to hear any and all claims against them when their affiliations with the State are so
20 ‘continuous and systematic’ as to render them essentially at home in the forum State.” *BNSF Ry.*
21 *Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017), *quoting Daimler AG v. Bauman*, 571 U.S. 117, 127
22 (2014).

23 The Ninth Circuit employs a three-part test to determine whether the defendant’s contacts
24 with the forum state are sufficient to subject it to specific jurisdiction. *Ballard v. Savage*, 65 F.3d
25 1495, 1498 (9th Cir. 1995). A court may assert specific jurisdiction if: (1) the defendant
26 purposefully availed itself of the privileges of conducting activities in the forum, thereby
27 invoking the benefits and protections of its laws, or purposely directs conduct at the forum that
28 has effects in the forum; (2) the claim arises out of the defendant’s forum-related activities; and

(3) the exercise of jurisdiction comports with fair play and substantial justice, i.e., it is reasonable.

Id. In this case, this Court has neither specific nor general jurisdiction over Sentinel.

A. Sentinel is Not Subject to General Jurisdiction Because Sentinel Does Not Have Systematic and Continuous Contacts with Nevada.

General jurisdiction exists if the defendant has “substantial” or “continuous and systematic” contacts with the forum state. *Fields v. Sedgwick Assoc. Risks, Ltd.*, 796 F.2d 299, 301 (9th Cir. 1986). “The standard for establishing general jurisdiction is ‘fairly high,’ and requires that the defendant’s contacts be of the sort that approximate physical presence.” *Brody Enters. v. MTS Partners, Inc.*, No. 2:11-cv-00489-GMN-LRL, 2011 WL 2517029, at *2 (D. Nev. June 23, 2011). Factors to be considered in the analysis include “whether the defendant makes sales, solicits or engages in business in the state, serves the state’s markets, designates an agent for service of process, holds a license, or is incorporated there.” *Id.* Courts may also look to whether the defendant “owns property, keeps bank accounts, [or] has employees” in the state. *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1124 (9th Cir. 2002).

None of the factors listed above are present here. In order for a contact to be “systematic and continuous,” there first needs to be a contact. Sentinel did not form in Nevada, nor does it have a place of business in Nevada. UNFI’s Complaint does not allege that Sentinel had any systematic or continuous contacts with Nevada. Because Sentinel has no contacts with Nevada that are systematic or continuous, there is no basis for this Court to exercise general jurisdiction over Sentinel.

B. This Court Lacks Specific Jurisdiction.

Specific jurisdiction exists only under certain circumstances. The Ninth Circuit applies a three-part test to determine whether courts may, consistent with due process, exercise specific jurisdiction over a non-resident defendant:

- (1) the non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully

1 avails himself of the privilege of conducting activities in the
2 forum, thereby invoking the benefits and protections of its laws;
3 (2) the claim must be one which arises out of or relates to the
4 defendant's forum-related activities; and
5 (3) the exercise of jurisdiction must comport with fair play and
6 substantial justice, *i.e.* it must be reasonable.

7 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (applying
8 principles derived from *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).

9 If the plaintiff does not satisfy either of the first two prongs, there is no personal
10 jurisdiction. *Id.* If the plaintiff meets the first two prongs, the burden shifts to the defendant to
11 show that the exercise of jurisdiction would be unreasonable. *Id.*

12 UNFI fails on all three of these criteria. UNFI's Complaint does not allege that Sentinel
13 purposefully availed itself of conducting activities in Nevada, nor that the claims against Sentinel
14 arise out of any of Sentinel's forum-related activities. Nor could it do so. Sentinel issued each of
15 its policies to RWT in Tennessee through an out-of-state broker with no connections to Nevada.
16 The most UNFI can allege is that Sentinel's rights and obligations under the policies it issued to
17 RWT were "modified" by this Court's December 2, 2021 Order Granting Motion For Substantive
18 Consolidation *Nunc Pro Tunc* As Of The Petition Date Pursuant to 11 U.S.C. § 105(a) (ECF No.
19 99) (the "Consolidation Order"), *In re: AFFINITYLIFESTYLES.COM, INC.*, No. BK-S-21-
20 14099-NMC (Bankr. D. Nev.). Consequently, UNFI contends that, as a result of the
21 Consolidation Order, all of the Underlying Actions must be deemed to allege injury caused by
22 "collective acts and omissions" of all of the Debtors, including RWT. *See, e.g.*, Complaint for
23 Declaratory Relief ¶¶ 118, 123 (June 23, 2023) (ECF No. 1). But that misstates both the import
24 of this Court's Consolidation Order and the minimum contacts analysis. The Consolidation Order
25 provides that the assets of one debtor can be used to satisfy the liabilities of another, but it does
26 not change the nature of underlying tort suits directed to certain (but not all) of the debtors. The
27 Consolidation Order, in other words, does not convert the Underlying Actions into cases against
28

1 RWT. Nor does it convert the allegations of wrongful conduct in the Underlying Actions into
2 allegations against RWT.

3 But even if UNFI were correct, it would not create jurisdiction here. The minimum
4 contacts analysis turns on whether *Sentinel*—the party against whom UNFI is seeking relief—has
5 purposefully availed itself of Nevada as the forum state. And here, there is no question that it has
6 not, where Sentinel issued policies to an out-of-state company (RWT), that were negotiated,
7 brokered and delivered outside the state of Nevada, and that were issued to cover risks outside the
8 state of Nevada. UNFI’s allegations² cannot create contacts between Sentinel and Nevada that
9 never existed under the Sentinel Policies issued to RWT in Tennessee.

10 Sentinel did not purposefully avail itself of the laws of Nevada in connection with any of
11 the policies that Sentinel issued to RWT in Tennessee. Even if UNFI could somehow
12 demonstrate prongs one and two of *Burger King*, the exercise of jurisdiction over Sentinel would
13 violate traditional notions of justice. Sentinel is a Connecticut corporation and did no business in
14 Nevada that relates to any of UNFI’s causes of action. It would be fundamentally unfair to hail
15 Sentinel into Nevada to litigate where it did no business giving rise to UNFI’s claims, including
16 that it did not issue the subject Sentinel Policies in Nevada nor to any Nevada insured.

17 **II. UNFI Failed to Timely Effect Service on Sentinel**

18 UNFI’s Complaint against Sentinel should be dismissed for the additional reason that
19 UNFI failed to timely effect service of the summons and Complaint on Sentinel. “Rule 7004 sets
20 forth the procedure for serving a summons in an adversary proceeding.” *In re Hillyer*, No. 2:20-
21 AP-01041-BTB, 2021 WL 1202417, at *2 (B.A.P. 9th Cir. Mar. 30, 2021). Rule 7004(e)
22 provides that, among other specified types of service, service made on a corporation under Civil
23 Rule 4(h)(1) “shall be by delivery of the summons and complaint within 7 days after the
24 summons is issued.” Fed. R. Bankr. P. 7004(e). The summons in this case was issued June 26,
25 2023, and service on Sentinel under Fed. R. Civ. P. 4(h)(1), made applicable by Fed. R. Bankr. P.
26 7004(a)(1), was therefore due to be completed by July 3, 2023. UNFI only served the summons

27 ² Sentinel denies that it has any coverage obligations for liabilities acquired by RWT after the end
28 of the Sentinel policy period, by the Consolidation Order or otherwise.

1 and complaint on Sentinel's registered agent, CT Corporation Service, via personal service on
2 July 10, 2023. *See* Summons Service Executed on Sentinel Insurance Company, Limited (July
3 12, 2023) (ECF No. 8). Because Sentinel was not served with the summons and complaint within
4 7 days after the summons was issued in accordance with Rule 7004(e), service of process on
5 Sentinel was insufficient, and UNFI's Complaint and all claims against Sentinel should be
6 dismissed.

7 CONCLUSION

8 For the reasons set forth above, Sentinel respectfully requests that the Court dismiss the
9 claims against Sentinel in this action.

10 Dated: Wednesday, August 9, 2023

RUGGERI PARKS WEINBERG LLP

11
12 By: /s/ James P. Ruggeri

13 James P. Ruggeri

14 Will comply with LR IA 11-2 within 14 days.

15 Joshua P. Mayer

Will comply with LR IA 11-2 within 14 days.

16 Dated: Wednesday, August 9, 2023

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17
18 By: /s/ Louis M. Bubala III

19 Louis M. Bubala III

20 Brittney A. Lehtinen

21 *Attorneys for Defendant*

22 *Sentinel Insurance Company, Limited*
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